IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1379 OF 1997

Mr. Prakash Babu Harmalkar)
reisidng at: Flat No.6, First)
Floor, 'Jer Villa',)
Plot No.132, Suparibaug Road,)
Parel, Bombay 400 012.) ...Petitioner.

V/s

1. State of Maharashtra)

2. The Controller)
of Accommodation)
having his office at:)
Government Barrack No.8,)
Free Press Journal Marg,)
Bombay 400 001.)

3. Mr. Pramod Jaysen Jayakar)
Indian inhabitant of Bombay)
residing at: 301, Jay)
Apartments Linking Road,)
Santacruz (West), Bombay)
400 054.) ...Respondents.

Mr. C. Joseph for the petitioner.

None for respondent Nos. 1 and 2.

Mr. F.L. Berawala with Ms. Rohini Dandekar i/b Berawala & Co. for respondent No.3

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 20TH DECEMBER, 2005

JUDGMENT: (Per V.M. Kanade, J.)

1. By this Petition, the petitioner is seeking the appropriate writ, order and direction, directing the respondent Nos. 1 and 2 not to implement and/or execute the impugned order dated 14/08/1997 passed by the respondent No.2 - Controller of Accommodation whereby the respondent No.2 had authorized the Area Inspector to take possession of the premises in which the petitioner is residing since the time of allotment of the premises through the Commissioner of Police, Bombay.

2. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

3. The petitioner joined the police force of the Government of Maharashtra as Police Sub-Inspector in 1979. He was allotted Flat No.6 on the first floor of the Building known as ‘Jer Villa’ situated at Parel, Bombay - 400 012 (hereinafter referred to as "the said premises") by the respondent No.2 through the Commissioner of Police, Bombay in the year 1984 and the petitioner has been residing in the said premises since then. The respondent No.3 is the landlord of the building wherein the said premises is situated.

The respondent No.3 filed Writ Petition in the High Court being Writ Petition No. 1201 of 1996, seeking an appropriate writ, order or direction, directing the respondent Nos. 1 and 2 to hand over the vacant and peaceful possession of the premises. That Writ Petition was allowed and the respondent Nos. 1 and 2 were directed to implement the order within six months. Pursuant to the order passed by this Court on 17/7/1996, the respondent No.2 passed an order dated 14/8/1997, which is impugned in this Petition, appointing the Area Inspector to take possession of the said Flat. Being aggrieved by the said order, the petitioner has filed this petition.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that after the order was passed by this Court on 17/7/1996, the Government of Maharashtra promulgated an Ordinance on 7/12/19996, amending the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, the Bombay Land Acquisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955 which was approved by the State Legislature and the Amendment Act No.16 of 1997 called the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Acquisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 was passed

(hereinafter called "the said amendment"). It is alleged by the learned Counsel appearing on behalf of the petitioner that by virtue of the said amendment, the petitioner had become a deemed tenant within the meaning of the Bombay Rent Act and, therefore, the order passed by this Court on 17/7/1996 had become unenforceable. He also submitted that the subsequent order passed by the respondent No.2 dated 14/8/1997 also was illegal, non est and unenforceable in view of the said amendment to the aforesaid three Acts. The learned Counsel submitted that the petitioner being protected under the amended provisions of the statute, the respondent No.2 had no authority to take possession of the suit premises of the petitioner and, at the highest, the petitioner could be evicted by following due process of law by obtaining an eviction order from the competent court.

5. The learned Counsel appearing on behalf of the respondent No.3, on the other hand, submitted that the petitioner had no locus to file the Petition. It was submitted that the petitioner had been given police quarter and the monthly rent of the police quarter was deducted from his salary. He further submitted that the petitioner was not a Government allottee within

the meaning of the amended provisions of the Rent Act and, therefore, he was not entitled to get the protection of the amended provisions of the Rent Act.

6. The learned Counsel appearing on behalf of the petitioner relied upon the judgment of the Supreme Court in the case of Welfare Assocn. A.R.P., Maharashtra and another vs. Ranjit P. Gohil and others reported in **AIR 2003 SC 1266**. He submitted that though the validity of the amended provisions of the Act was upheld by the Supreme Court in the said case, the petitioner was deemed to be a protected tenant by virtue of the ratio laid down by the Supreme Court in the said case and, therefore, the petitioner was not liable to be evicted.

7. The learned Counsel appearing on behalf of respondent no. 3 submitted that the petitioner was not the Government allottee and, therefore, was not protected by the amendment made in the Rent Act. She invited our attention to the judgment of the Supreme Court in the case of Welfare Assocn. (supra). She also invited our attention to the order of allotment which was made in favour of the Commissioner of Police and the subsequent order of allotment in favour of the petitioner which was made through the

Commissioner of Police as his nominee. She submitted that in view of the fact that the allotment order was made in favour of the petitioner as a nominee of the Commissioner of Police, the petitioner had no locus to claim any right in his favour as a protected tenant.

8. We have given our anxious consideration to the submissions made by the learned counsel appearing on behalf of the petitioner and respondents. In our view, the submissions made by the learned Counsel appearing on behalf of the petitioner cannot be accepted. A perusal of the order of allotment dated 31/12/1996 which is annexed to the affidavit-in-reply which is filed by the Government indicates that the allotment was made in favour of the Commissioner of Police and he was permitted to nominate the member of his staff having no accommodation to occupy the premises. The order of allotment was, therefore, in favour of the Commissioner of Police and not in favour of the petitioner. The order of allotment, therefore, indicates that the Commissioner of Police was authorized to nominate the person from his staff to occupy the premises. After the said amendment was passed by the State Legislature, the protection was afforded to those persons who were allotted the premises under the Bombay Land Requisition Act, 1948

and only such persons were granted protection as deemed tenant under section 15B of the Bombay Rent Act.

9. The word "Government allottee" has been defined under section 5(1A) of the said Amendment Act. The said definition of the word "Government allottee" included two categories of deemed tenants viz. the tenants who were occupying the premises for non-residential purposes which were covered under section 5(1A) and sec 5(1A)(b) described the category of persons protected as deemed tenants, occupying the residential premises. In the present case, the petitioner claims to be the tenant in respect of the residential premises and, therefore, it will have to be seen whether he falls within the definition of "government allottee" under section 5(1A). It would be relevant to reproduce the said provision of section 5(1A) of the said Amendment Act which reads as under:-

"5(1A) "Government allottee",-

. (a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any department

or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 are allowed by the State Government to remain in their occupation and possession means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose to any person and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government

> Premises (Eviction) (Amendment) Act, 1996, such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

It will also be relevant to take into consideration the provisions of Section 15(B)(1)(b) of the said Amendment Act, which reads as under:-

> 15(B)(1).....
>
> (a).....
>
> (b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (1A) of section 5,
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> . shall, notwithstanding any thing contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June 1996, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises

> shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date."

From the aforesaid two provisions, it can be seen that those persons who were in occupation of the premises as "Government allottee" have been protected and have been given the status of deemed tenants. The validity of the said provisions was challenged and the Supreme Court in the case of Welfare Assocn. (supra), upheld the validity of the said amendment. In the said case, the Apex Court, after taking into consideration the statement of objects and reasons, observed in para 38 of its judgment as under:-

> "38. A grim and emergent situation was created on account of threat posed before the likely evictees who were in occupation of requisitioned premises. The impugned Amending Act also seeks to bring into effect a scheme of equitable redistribution of wealth and shelter so as to protect the licensee -

occupants by giving them the status of tenant and regulating the right to eviction exercisable by the landlords by making it conditional upon availability of grounds under a pre-existing rent control law already governing similar properties in the State of Bombay. The salutary goal of from each according to his capacity, to each according to his needs' was sought to be achieved. The essential need of shelter for other segments of society such as the State Administration, Semi-Government bodies, PSUs and the likes were also protected in public interest as otherwise their activities would have been jeopardized, which in turn would have had an adverse effect on the society. Thus if any grey area of impugned Amending Act is left out uncovered by Entries 6, 7 and 13 of List-III is covered by Entry 18 of List-II i.e. 'economic and social planning'.

The Supreme Court, therefore, upholding the validity of the said Amendment Act has, inter alia, observed that it is essential to protect the need of shelter for other segments of the society such as administration, Semi-government bodies, PSUs in public

interest as, otherwise, their activities would have been jeopardized which, in turn, would have had an adverse effect on the society.

11. In our view, the petitioner would not be entitled to get the benefit of the said protection which has been granted to the Government allottees. In the present case, initially, the order of allotment which was made under the Bombay Land Requisition Act was in favour of the Commissioner of Police and his nominees. The intention of allotting the said premises in favour of the Commissioner of Police was to ensure that the member of the staff of the Commissioner, who had no accommodation while working in the City of Mumbai, could be allowed to use the premises during the period of his stay in Mumbai and after his transfer from the City, the Commissioner could nominate his other member of the staff who did not possess any flat in Mumbai. The purpose under the allotment order was clearly to ensure that the member of the staff of the Commissioner of Police who was working in Mumbai could be provided with an accommodation as long as he was staying in Mumbai. Since the petitioner is, therefore, clearly a nominee of the Commissioner of Police, in our view, he cannot claim to have any independent right of being protected as deemed tenant

by virtue of the said amendment. In our view, the Commissioner of Police, in his official capacity, would be a deemed tenant within the meaning of section 5(1A)(b) of the said Amendment Act. It is obvious from the order of allotment which is produced by the Government which is annexed to the affidavit-in-reply that the petitioner was not a direct allottee, firstly, because the initial order of allotment was made in favour of the Commissioner of Police and, secondly, the said order of allotment was made prior to the appointment of the petitioner in the police department. The petitioner was appointed as Sub-Inspector in the Police Department in 1979 whereas, admittedly, the initial order of allotment in favour of the Commissioner of Police was prior to the said date. Once it is established that the petitioner is not a direct allottee at the time when the initial order of allotment was made, he cannot claim any right as a deemed tenant merely because at the time when the said Amendment Act was passed, he was in physical possession of the premises. The Amendment Act does not give protection to persons who were occupying the flat physically on the date when the Amendment Act came into force i.e. 7/12/1996. The Amendment Act, however, protects the rights of persons who were the original allottees in whose favour the order of

requisition was made by the State Government. The word "person", therefore, cannot be construed to mean only the person who is in occupation of the premises but will have to be construed to mean the person in whose favour the initial order of allotment had been made. In the present case, it can be seen that the order of allotment was made in favour of the Commissioner of Police in his official capacity and/or his nominee. Thus, the allotment was made in favour of the Commissioner of Police and not the petitioner. From the conjoint reading of section 5(1A)(a) and (b) and the provisions of the Bombay Land Requisition Act, it can be seen that there is no bar under the aforesaid provisions for making allotment in favour of the department of the Government or its head. Though the word "department" which is found in section 5(1A)(a) is not used in so many words in clause (b) of the said provision, it cannot be said that the word "person" is used to mean a living person and not an artificial person or a person in the official capacity. The word "person" has not been defined under the said Rent Act. The word "person" has been defined under section 3(42) of the General Clauses Act, 1897 which reads as under:-

"3(42) "person" shall include any company or

association or body of individuals whether incorporated or not;"

The word "person", therefore, under the General Clauses Act, includes a living person as well as an artificial person such as Corporation etc. In this context, therefore, if the term "government allottee" is construed in its proper perspective, it would not include such persons where nominees of the original allottee who happened to be in occupation of the premises merely because they are transferred to Mumbai at the relevant time and were nominated to occupy the premises by the Commissioner during their tenure in Mumbai. In our view, therefore, the petitioner would have no locus to claim the protection of the Amendment Act as, from the admitted facts on record, he cannot be said to be a direct allottee of the premises.

12. In the result, there is no substance in the submissions made by the learned Counsel appearing on behalf of the petitioner. The writ petition is, therefore, dismissed. Interim relief granted by this Court is vacated.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)